IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE.

CUSTOMS APPEAL NO. 5 OF 2005.

The Commissioner of Customs,
Chhatrapati Shivaji International
Airport, Mumbai. ... Appellant.

vs.

M/s Classique Enterprises. ... Respondents.

Shri R.V. Desai,Senior Counsel with H.V. Mehta and R.Ashokan i/b Dr. T.C. Kaushik for the Appellant.

Shri Sanklecha i/b Shri Sachvani for the respondents.

CORAM: V.C.DAGA &
J.P.DEVADHAR,JJ.
DATED: 17-3-2005.

P.C.

1. This appeal is filed by the Commissioner of Customs, International Airport, Mumbai, challenging the order dated 30.7.2004, passed by the Customs, Excise and Service Tax Appellate Tribunal, ('The Tribunal' for short), whereby appeal came to be allowed and the order passed in Original by the Commissioner of Customs, C.S. International Air Port, Mumbai, came to be set aside.

2. The order impugned before the Tribunal had directed confiscation of goods viz. glass chattons and cup chains valued at Rs. 26,68.388/- (CIF) and Rs. 40,02,582/- (LMV) under section 111(d), (1) and (m) of the Customs Act, 1962 ('the Act') with an option to redeem goods on payment of redemption price

of Rs. 10 lacs under section 125 of the Act. The said order had further imposed a fine in the sum of Rs. 5 lacs on Shri Sashi Arora- Respondent No.5, 2 lacs each on his firms; who are arrayed as respondent Nos. 1 to 5 under section 112(a) of the Act. The foundation of the said order passed by the Commissioner of Customs, CSI Airport, Mumbai, was the gross undervaluation of the goods with misdeclaration. The Tribunal while allowing the appeal was of the view that the respondents herein, neither undervalued the valuation of the goods nor misdeclared the same.

3. Being aggrieved by the aforesaid order passed by the Tribunal, the present appeal has been filed at the instance of the Revenue under section 130 of the Customs Act, 1962.

4. When this appeal came up for admission, learned Counsel appearing for the respondents raised a preliminary objection as to the maintainability of the appeal, contending that the impugned order of the Tribunal being appealable under section 130E(b) of the Customs Act, 1962, this appeal, filed under section 130 of the Act before this Court, should not be entertained and the appellant be relegated to an appellate remedy as provided under section 130E (b) of the Act which reads as under:

> "130E. Appeal shall lie to the Supreme Court from-
> (a).....
>
> (b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment."

5. Learned Counsel for the respondents reiterated that looking to sweep of sub-clause (b) of section 130E; any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment, is appelable in the Supreme Court under section 130E (b) of the Act. While dissecting the provision, learned Counsel for the respondents submitted that the phraseology "relating..... to the determination ....." must be interpreted widely so as to bring it within its fold not only the rates of customs duty or to the valuation of the goods for the purposes of assessment, but also issues incidental thereto.

6. Turning to the facts of the case at hand, learned Counsel for the respondent submitted that the show cause notice is mainly grounded on the ground that the goods were undervalued for the purpose of assessment of customs duty. The central issue

involved in the adjudication was as to whether goods were deliberately undervalued . In this view of the matter, he submits that section 130E (b) clearly provides appellate remedy before the Supreme Court. As such, this Court will be within its jurisdiction to relegate the petitioner to the appellate remedy as provided in section 130E(b) of the Act.

7. Learned Counsel for the appellant placed reliance on the judgment of the Apex Court in the case of Union of India vs. Auto Ignation Ltd. 2002(142) ELT 292 (Bom.), wherein more or less in similar circumstances, the question of availability of appellate remedy under section 35L of the Central Excise and Salt Act, 1944 has been considered. While considering the said issue, this Court has observed as under:

> " Having heard the parties at length, it is not possible to accept the contention raised by the learned Counsel for the Revenue. In the light of the findings recorded in the case of Navin Chemicals Mfg. and Trading Co.(Supra) and looking to the text of section 35L of the Act, it is not possible for us to accept the contention of the Revenue that the question of rate of duty is not an issue involved in the present case. The Supreme Court clearly laid down that the dispute as to the classification of goods as to whether or not they are covered by the exemption notification relates directly and proximately to the rate of duty applicable thereto for the purposes of assessment. Applying the said dicta, the question whethers not the respondent-assessee is well within exemption

> notification is a question directly involved in this disputes relates directly and proximately to the rate of duty of excise for the purposes of assessment. In other words, the issue raised in these petitions directly relates to the dispute whether or not they are covered by the exemption notification, which can conveniently be gone into in an appeal filed under section 35L of the Act.
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> On the above canvas, we are clearly of the opinion that remedy provided under section 35L of the Act is very much available to the petitioner. At any rate, we are of the opinion that the view taken by the Division Bench of this Court in the case of Colour Chem Ltd. (supra) is a proper view and we respectfully follow the same."

In the aforesaid backdrop, the learned Counsel for the respondent urged that this appeal should be dismissed in view of the availability of remedy before the Supreme Court.

8. Per contra, Shri R.V. Desai, learned Counsel for the Appellant-Revenue submitted that availability of the appellate remedy before the Supreme Court under section 130E(b) of the Act cannot be an absolute bar to entertain this appeal under section 130 of the Act. He submitted that the appellant has not only raised the question relating to the valuation of the goods for the purposes of customs duty but also other issues like misdiscription of goods. He, therefore, submitted that the said dispute could not be said to be within the sweep of appellate remedy provided under section 130E(b) of the Act.

Consideration:

8. After having heard rival parties, the position regarding course to be adopted by the Court when suitable appellate remedy is available, is well-settled. The question involved in this appeal, as already stated above, mainly centres around under valuation of the goods for the purposes of assessment of duty. In other words, valuation issue raised directly relates to the issue whether or not the authorities were justified in holding that the respondents have undervalued the goods for the purposes of assessment of duty. This issue can be gone into in an appeal provided under section 130E(b) of the Act.

9. On the above canvas, we are clearly of the opinion that the remedy provided under section 130E(b) of the Act is very much available to the petitioner. Thus, for the reasons stated, we sustain the preliminary objection raised by the respondent and dismiss the appeal relegate the appellant to an appellate remedy provided under section 130E (b) of the Act, without expressing any opinion on merits of the issue involved in the appeal. The appellant would be at liberty to invoke appellate jurisdiction as provided under section 130E(b) of the Act, if so advised. All rival contentions are kept open. No order as to costs.